

## **SYSTEM STUDY ON TENDERING & CONTRACTING REGIME OF KOPT**

World over, tenders and contracts of various hues have become some of major instruments in the hands of public and private organizations for achieving project goals. Given the dwindling manpower, their importance can hardly be overemphasized for ensuring efficient management and operation of Kolkata Port Trust (KoPT). An analysis made by Vigilance Department on the subject presented below suggests that the current architecture of contractual decision making in KoPT needs significant remodelling/revamping. Interestingly, this is needed more for ensuring basic efficiency in the existing tendering /contracting process itself than for things connected with Vigilance administration.

### **(A) OVER CENTRALIZATION OF CONTRACTUAL DECISION MAKING**

#### **(i) Tendering system in most Organizations:**

In most organizations that deal with sizeable volume of tenders/contracts, decision making is generally done in two phases. The first phase starts with constitution of a multi-member committee called "Tender Committee" (generally comprising of 3 members – a Convener Member, a Finance Member and an Associate Member) who examine the bids received in response to tender on various technical and commercial parameters set out in the bid document. Thereafter, the Tender Committee recommends a suitable offer to a higher authority (called "Tender Accepting Authority) for awarding of contract. The Tender Accepting Authority is entrusted with full power to accept or reject or modify the recommendation put up to him/her by the Tender Committee Members and is generally an officer one rank higher than the officers who constitute the tender committee. This is popularly known as "**3+1 System of Tender-decision-making**" i.e. a *recommendatory body of 3 Officers* and another officer - a rank higher than the officers who comprise the Tender Committee - having power to accept/reject/modify their recommendations. In some cases, the number of Tender Committee members may vary depending on the nature of tender and number of stake-holding departments. Nevertheless, the basic structure of tender-decision-making in most organizations follows the above percept. Organizations may also fix a threshold financial limit below which constitution of such multi-member Tender Committee of decision making can be dispensed with. These are generally known as Non-TC cases and are decided by single officer of appropriate level subject to vetting by the internal finance wing.

#### **(ii) Tendering Process followed in KoPT:**

In our KoPT system, the threshold limit for decision through Tender-Committee is set at the level of Rs.10 lakhs in terms of estimated value of tender. Above this value constitution of a recommendatory Tender Committee and the subsequent acceptance of their recommendation by a Higher Authority is mandatory. At present 4 levels of Tender Committee have been envisaged depending on the estimated tender value as given below:-

Group	Estimated value of tender	Level of officers (in general)
1	Rs 10,00,001 to Rs 60,00,000/	In the pay scale of Rs 20600 -46500
2	Rs 60,00,001 to Rs 1,00,00,000	In the pay scale of Rs 24900 -50500
3	Rs 1,00,00,001 to Rs 2,00,00,000	In the pay scale of Rs 32900-58000
4	Above Rs 2,00,00,00/-	HoD/GM

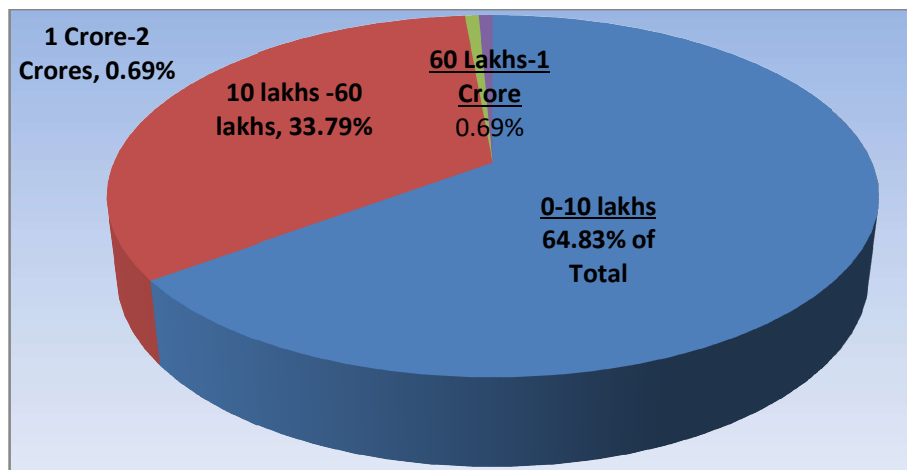
As can be seen from the above table, the lowest level of “**sanctioning power**” at KoPT starts at HoD level for normal works tenders with estimated value ranging from 0 to Rs 1 Crore. Since a majority of tenders floated in KoPT happen to be in the value range of Rs.0 to Rs.60 lakhs (Non-TC cases and within the recommendatory power of first level TC ), the HoD becomes the “**Sanctioning Authority**” for all these cases. **In fact currently the HoD is the sanctioning authority for not only cases coming within the recommendatory power of the two lowest level TCs but also for the vast majority of tenders below Rs 1 Lakhs which do not require formation of Tender Committee.**

**(iii) Case Study in Tender Distribution in a typical contracting Department of KoPT:**

As a sample study, Vigilance branch analyzed the value-wise distribution of tenders in one department of KDS i.e. Civil Engineering Department. The findings presented below are a clear pointer to over-centralization in the present model of tender-decision making followed in KoPT.

**TENDER –DISTRIBUTION IN CIVIL ENGG DEPARTMENT**

Estimated Value Range	Tender Count	Recommendation Level (KDS/HDC)	Sanctioning Authority	% of Total Tender Count	Cumulative Share(%)
0-10 lakhs	94	Non-Tender Committee	HOD	64.83	64.83
10 lakhs -60 lakhs	49	Level-1 (Exe En / Asst Mgr)	HOD	33.79	98.62
60Lakhs-1 Crore	1	Level-2( Sup. Engg/ Dy. Mgr)	HOD	0.69	99.31
1 Crore-2 Crores	1	Level-3(Dy. CME Dy.CE, /Sr. Dy. Mgr)	Dy. Chairman	0.69	100.00
<b>TOTAL TENDER POPULATION</b>	145				



***iv) Over-Centralization of Tender-Decision Making***

The above case-study shows that **nearly 99.3% of the tender files** of KDS Civil Engineering Department with value range **Rs.0 to Rs.1 crore** end up on the table of the Chief Engineer for sanctioning. **This includes Non-Tender Committee Cases amounting to 64.83% of the tender population of the department.** Obviously one does not require the highest level of a department to be saddled with the decision making power of the lowest level of tenders. The state of over-centralization in tender decision making becomes even more evident when viewed from the fact that among **630 class-I officers in KoPT** the “power to accept” a tender is vested with **only 16 officers (Chairman, 2 Deputy-Chairman and 13 HoDs/GMs)**. In other words contracting power begins at only **97.5% Percentile of Executive Hierarchy of KoPT**. It appears that in past some financial powers in the matter of tendering/contracting were delegated to authorities below HoD level. But the same were withdrawn as evident from the following extract from Ministry’s letter No.PR-17011/2/98-PG. Dt.24<sup>th</sup> October,2000.

*“As the delegation of financial powers is not envisaged below the level of HoDs as this Ministry’s letter No.PR-17011/2/96-PG dated 28.8.1997, the powers that are hitherto being exercised unauthorisedly by below HoD level are withdrawn and henceforth be exercised by HoDs.”*

The above is contrary to what had been envisaged by the Committee constituted by Ministry of Shipping in 2015 to go into “Delegation of financial power in Major Port Trusts” as reflected from their following recommendations:

“ .....

- i) Delegation of powers should foster faster decision making.*
- ii) It should result in effective implementation of projects and avoid time and cost overrun.*
- iii) Higher levels of Port Authority should focus on important port development management issues and projects, not routine matters. ...”*

The analysis and case study presented above indicates that the present way of managing the tender system in KoPT has to be significantly altered to remove the abnormal congestion of decision making at the highest level.

**v) The Statutory Background of Delegation of Power and possible alternatives:**

It may be noted that the term “**Executing Contract on behalf of Board**” reflected in the 2015 letter of MoS which lays down the financial limits of such power for various Port Authorities stems from Section 34 of MPT Act. The said section declares “ *Every contract shall, on behalf of a Board, be made by the Chairman [or by any such officer of the Board not below the rank of the Head of a department as the Chairman may, by general or special order, authorise in this behalf] and shall be sealed with the common seal of the Board*”. Hence it appears that any delegation of contracting-power below HoD level would contradict Section 34 (Although Draft Major port Authorities Bill,2015 pending before Parliament does away with such restriction, it is yet to be converted into an Act) .

It should also be kept in mind that “Executing a Contract” and “Entering into a Contract by Accepting Offer of a Tenderer” are two different actions. The question of “execution of contract” comes only after an “Acceptance of an Offer” is made by an appropriate authority. Hence it may be worthwhile to explore the possibility of delegation of “Tender Acceptance Power” to authorities “below HoD Level” on the strength of Section 21(b) of the existing Act read with section 111 which state as follows “

**Section 21(b): Delegation of powers**

*“Board, with the approval of the Central Government, to specify (b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the **Deputy Chairman or any officer of the Board** and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed: Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman”*. [Section 21(b) of MPT ACT,1963]

**Section 111 : Power of Central Government to issue directions to Board**

*“Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time .... The decision of the Central Government whether a question is one of policy or not shall be final.*

Needless to say that the desirability of delegation of financial power for “Acceptance of Offer” definitely comes within the “policy matter” of Ministry as has already been stated at the outset of their 2015 letter.

**(vi) Added Complication in exercise of existing power:**

**Even more worrisome is the fact** that even the above delegation of powers i.e. at HoD level is not being followed uniformly in all departments. These files, as per current practice, are being sent upward to another level higher i.e. to the level of Dy.Chairman. From informal discussions with various officers of KDS and HDC, it is understood that such a situation has arisen due to the following

- a) The GM level officers in HDC are not exercising the power of HoD because there exists a regulatory confusion as to whether the power of HoD, as specified in the delegation of powers, can be applied to the post of GM in HDC. It is contended that although the power of GM in HDC is equivalent to that of HoD in KDS a conclusive notification of the same is yet to materialize.

- b) The other confusion arises from the “phraseology” used in the delegation of power enshrined in letter No17011/1/2005- PG dated 11<sup>th</sup> February, 2015. In this letter the power of Rs 1 Crore for HoD has been mentioned as “**Execution of Contract on behalf of Board**” and not “**Power to Accepting Recommendation of Tender Committee**” or “**Power to accept Offer**” etc. Apparently there is confusion among some as to whether the term “**Execution of Contract on behalf of Board**” can be construed to mean acceptance of recommendation of TC members. Needless to say that financial powers in relation to “tenders” and “contracts” need to be labelled unambiguously without any possibility of differing interpretations.

**(vii) Situation same for Proposals/Estimates also:**

Not just “Tender Committee Recommendations”, but proposal and estimates of even smaller values are observed to be invariably being pushed to the desk of Dy. Chairman for various types of approval/concurrence. There appears to be no clear financial-delegation for such pre-tendering activities. In any case, demand for decision taking at higher levels for cases that can be handled at lower level is highly detrimental to organizational efficiency and is contrary to the spirit of decentralized decision making as emphasized by the MoS appointed Committee, stated in Ministry of Shipping’s letter in F No. 17011/1/2005-PG dated 11th February,2015.

**(viii) Non-Certification of “Reasonableness of Rate “**

Rule-137 of GFR lays down the fundamental principle of public buying. This forms a part of the financial power delegation of power for Major Ports conveyed vide MOS letter dated 11.2.15. Although rule 137(iv) says that “*the **procuring authority** should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.*” Despite such requirement, Vigilance has come across several TC cases where no such clear certification of rate-reasonableness is found recorded explicitly either by TC Members or Sanctioning Authority. Moreover, in many TC cases, there are multiple signatories – TC Members, HoD , FA & CAO – before the TC-recommendation for contract award reaches Dy. Chairman/ Chairman level for sanction. In such cases a confusion may arise as to which precise authority should record compliance to the above rule of GFR by being labelled as “**Procuring Authority**”. Neither the delegation of power nor any circular/procedural order at local level could be located which stipulate the level at which such certification is required to be made/recorded.

**(ix) Post-Contract Management**

The skewed nature of decision making is also evident in the post - contract management stage which most often involves requests from supplier/contractor for extension of time to complete project/deliver goods. At present time-extension in contracts without imposition of Liquidated Damage (LD) travel all the way upto the Dy. Chairman’s desk. The only time such time-extension requests get decided at HoD level is when the extension is with Liquidated Damage. While such a system might have been envisaged in the Port for controlling time - overrun in contracts, concentration of decision making at higher levels, for very low value contracts, may prove counterproductive. Certain limits, at least for low value contracts, can be laid down to be decided at Dy. HoD/HoD level instead of transmitting the same to Dy. Chairman.

Most organizations have a balanced delegation of power in place to enable distributed decision making i.e. low value tenders being decided at lower level of hierarchy and only high value of

tenders travelling upwards. **Considering the fact that the quality of human resources even at entry level of management in KoPT is quite high – being at least graduate engineering level (in Technical Departments), it is not understood why the responsibility of decision making of very low value tenders cannot be accomplished at these levels.** Whenever any system embarks upon a deregulation - exercise (in case of KoPT, the same had already been recommended by the Ministry) concerns for runaway contractual expenditure do arise. However, if an effective system of monitoring of tenders/contracts is put in place, then it will not be difficult for higher management to track low value tenders and accrual of expenditure there from. In such a scenario the highest management would be free from avoidable day-to-day participation in decision making of such low value tenders and be able to concentrate on larger organizational goals.

## **(B) ACCOUNTABILITY – DIFFUSION**

In most organization, the boundary between the role of **“Tender Committee Members”** and **“Accepting Authority”** is very clearly demarcated. The role of “Tender Committee Members” is to present their recommendations for award of contract or otherwise to a Higher Level Officer i.e., the “Tender Accepting Authority”. The role of the Tender Accepting Authority in turn, is to either accept or reject or modify before a final supply order / LOA / agreement is made. Once the Tender Accepting Authority accepts the recommendation of the Tender Committee Members and the eventual LOA / Supply Order is prepared, that is sent for vetting by the associated finance before conversion into a legally enforceable agreement. Thus, in most organizations, between the Tender Committee (who render recommendations to the accepting / sanctioning authority) and the accepting authority / sanctioning authority (who accepts / rejects / modifies such recommendations) no other entity’s role of is envisaged. So strict is this procedure that no **authority other than the designated TC Members and Accepting Authority** can have access to the tender file until the decision to award (or discharge) is taken. The underlying intention behind such rule is to maintain the confidentiality in government tenders till the final award and limit access to only those who have the necessary delegation to participate in procurement decision making.

In KoPT the above boundary between “Recommendatory Body” and “Sanctioning Body” appears to be blurred. Here, the Tender Committee Members are observed to be putting up their recommendations to the “Sanctioning Authority” via a series of other higher officers like departmental HoD and Finance. As a result, between the recommendatory body and its final sanctioning authority there exist inter-mediate layers of higher officers. Unfortunately, the role expected from such inter-mediate authority has not been clearly defined in any Circular / Procedural Order. If such intermediaries are assumed to be having the power, to modify/accept the recommendation of the Tender Committee, then their role would encroach upon the powers delegated to the Sanctioning Authority. On the other hand, if they are expected to simply forward the recommendation of the Tender Committee, then their role would be that of an extra-layer in the recommendatory process. In either case, the desirability of such additional layering in the tender-decision-making process needs to be looked into by the KoPT / Ministry as a critical systemic need. The more is the existence of extra-layer/authority between ‘TC’ & ‘Sanctioning Authority’, the more will be the diffusion of Accountability, due to unclear/overlapping delegation-

boundaries. These aspects have also been observed in the analysis of some of the vigilance cases that are currently under process. Another issue that emerges from the above scenario is that the accountability for even trivial decisions gets unnecessarily diffused among various functionaries including Dy. Chairman/Chairman. This is contrary to what had been envisaged by the Ministry of Shipping who remarked “delegation should also enable the ports to function like real commercial organizations, on par with Public Sector enterprises.”

### **(C) ABSENCE OF COMPREHENSIVE DATABASE OF TENDERS/CONTRACTS**

Presently, KoPT does not have any comprehensive and searchable computer database of Tenders and Contracts. Considering the fact, that most projects / work in KoPT are dependent upon the speedy progress of tenders / contracts, absence of a proper computerized database hampers effective monitoring of progress at the highest level of organization i.e., at the level of Deputy Chairman / Chairman. Without computerization of at least this part of the Tender system, one would be unable to know how many tenders have been floated, how many are being decided / retendered and how many have undergone repeated time-overruns and whether the bills of contractors are held up at any stage. As has been experienced in multiple audits / vigilance cases, these are the most vulnerable points that need to be monitored not only from the vigilance point of view but also from the views of administration. Fortunately, given the abundant software skills available in our country, creation of such searchable database would take minimal time, effort and also entail very low cost. Kind attentions of Chairman / Deputy Chairman are invited to these vital aspects.

### **(D) INTERNAL INCONSISTENCY IN DELGATION OF POWER FOR TENDERING/CONTRACTING**

It has been stated in Ministry of Shipping’s letter F No. 17011/1/205-PG dated 11.02.2015 that “.. according to Ministry of Finance O.M.No.1(37)/2010-EII(A) dated the 2nd November 2010, relevant provisions contained in General Financial Rules shall be deemed to be applicable to autonomous bodies except to the extent the bye laws of an autonomous body provide for separate Financial Rules which has been approved by the Government. ”. The said letter lays down a financial delegation structure for tendering/contracting activities, among other activities, at Annexure-I and applicable provisions of GFR at Annexure-II separately. However, in closer scrutiny, both within the delegated structure and in their co-relation to provisions of GFR, several mutually inconsistent aspects have been found. Few illustrative examples are detailed below:

- i) At Annexure-I, under the subject of “Non-Statutory Delegation of power to Major Ports” , at Sl. No.15, the power for “Single Tender/Special Tender” has been stated Rs. 1 crore for Dy. Chairman.

In the same Annexure, at Sl. No.8, the power to “Purchase of Stores and Medicines” has been mentioned as Rs.50,000/- for HoD, Rs.3 lakhs for Dy. Chairman on the basis of “competitive quotation with concurrence of Finance”. This is anomalous because the power for “Single Tender” (which is the most restrictive form of tendering) for an

authority cannot exceed his power for Normal Tendering. In the above example the power for normal tendering to procure “stores” is considerably lesser for Dy. Chairman compared to his power for resorting to Single Tender.

- ii) While laying down power for “Single/Limited tender” under Sl. No 8 of Annexure-I, it has been stated that such power will be exercised “subject to adherence of CVC guidelines”. In reality CVC guidelines are to be followed by Public Procurement Authorities for any kind of tendering/contracting activity if such guidelines exist and not just in the case of “Single/Limited Tendering”. Mentioning the compliance to CVC guidelines only for Single/Limited Tendering gives an impression as if adherence of same can be dispensed with in other cases! It would also be in contradiction to a recent letter of Secretary, MoS which instructs authorities in all Major Port Trusts under MoS to strictly follow CVC guidelines in all areas of functioning.
- iii) The applicable parts of the GFR has been annexed along with the aforesaid MoS letter dated 11.2.15 at Annexure-II. Sl. No.5.3 of the letter deals with procedure for execution of work which correspondence to Rule 32 of GFR 2005. The said rule, quoted at Annexure-II, says “no work shall be undertaken before issue of administrative approval and expenditure sanctioned by the competent authority on the basis of estimate framed.” However, no delegation of power for financial limits for estimate approval by various authorities is separately indicated. At present in many departments even very low value estimates are being sent to Dy. Chairman Level for obtaining sanction before floating the tender.
- iv) There are many places where the delegated powers are (stipulated at Annexure-1 of Ministry’s 2015 letter) inconsistency with GFR (provided at Annexure-I of the same letter). For instance as per rules 146 of GFR lays down that the maximum power of purchase of goods from Local Purchase Committee is Rs.1 lakh for Dy. Chairman. However the same delegated vide Sl.No.6 of Annexure-I is upto Rs.2 lakhs for Dy. Chairman. If the power given in the delegation chart at Annexure-I is supposed to override the power of GFR reiterated at Annexure-II, then simultaneous mention of Rule-146 a part of the same letter would create avoidable confusion.